UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/925,333	08/09/2001	Thomas Mammone	01.38US	4422

7590 10/01/2002

Karen A. Lowney, Esq.
ESTEE LAUDER COMPANIES
125 Pinelawn Road
Melville, NJ 11747

EXAMINER	
WHITE, EVERETT NMN	

ART UNIT	PAPER NUMBER
1623	

DATE MAILED: 10/01/2002 3

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/925,333	MAMMONE ET AL.	
	Examiner	Art Unit	
	EVERETT WHITE	1623	

-- The MAILING DATE of this communication appears on th cover sheet with the correspondence address --

Period f r Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____ .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-19* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-19* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 2
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

2. Claims 1, 2, 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Denis et al (US Patent No. 5,286,629).

Applicants claim a method of exfoliating the skin comprising applying to the skin a composition containing an effective amount of at least one phosphosugar.

The Denis et al patent teaches a method for regeneration of the epidermis by application of a cosmetic or pharmaceutical composition that comprises α-D-galactose-6-phosphate (see abstract). In the abstract, the Denis et al patent teaches the

substitution of L-rhamnose with α-D-galactose-6-phosphate. See Example 10 of the Denis et al patent, which discloses an anti-wrinkle composition that comprises rhamnose and teaches an amount of rhamnose in the composition that embraces the amount of phosphosugar that is set forth in instant Claim 5. The instant claims differ from the Denis et al patent by describing the method as involving an "exfoliating procedure" which terminology is not used in the Denis et al patent. However, the term "exfoliating" embraces "regenerating" which is terminology used to describe the utility of the phosphosugar that is set forth in the Denis et al patent. Accordingly, it would have been obvious to one of ordinary skill in the art at the time of applicant(s) invention having the Denis et al patent before him to regenerate or exfoliate the skin with a sugar phosphate such as galactose-6-phosphate in view of their analogous structures and the resulting expectation of similar therapeutic properties.

3. Claims 7, 8, 11, 13-15, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Denis et al (US Patent No. 5,286,629).

Applicants claim a method for increasing levels of glycosaminoglycans in skin and a method of treating a skin condition associated with a reduced level of glycosaminoglycans in the skin comprising applying to the skin a composition containing an effective amont of at least one phosphosugar.

The Denis et al patent teaches a method for regeneration of the epidermis by application of a cosmetic or pharmaceutical composition that comprises α-D-galactose-6-phosphate (see abstract). In the abstract, the Denis et al patent teaches the substitution of L-rhamnose with α-D-galactose-6-phosphate. See Example 10 of the Denis et al patent, which discloses an anti-wrinkle composition that comprises rhamnose and teaches an amount of rhamnose in the composition that embraces the amount of phosphosugar that is set forth in instant Claims 11 and 18. The instant claims differ from the Denis et al patent by claiming that the application of a phosphosugar increases levels of glycosaminoglycans or is able to treat a skin condition associated with a reduced level of glycosaminoglycans in the skin. It is well establish in the prior art that beneficial results can be obtained by the application of phosphosugars

to the skin as demonstrated in the Denis et al patent. Applicants application of phosphosugar in methods to increase levels of glycosaminoglycans in the skin and to treat a skin condition associated with a reduced level of glycosaminoglycans in the skin is embraced by the method disclosed in the Denis et al patent since the regeneration of skin as described in the Denis et al patent suggests all the beneficial results associated with the revitalization of damage skin, which include restoring the proper level of glycosaminoglycans to the skin. Accordingly, it would have been obvious to one of ordinary skill in the art at the time of applicant(s) invention having the Denis et al patent before him to regenerate or to normalized the level of glycosaminoglycans in skin by applying to the skin phosphosugars such as galactose-6-phosphate, in view of their analogous structures and the resulting expectation of similar therapeutic properties.

4. Claims 3, 4, 6, 9, 10, 12, 16, 17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Denis et al (US Patent No. 5,286,629) as applied to Claims 1, 2, 5, 7, 8, 11, 13, 15 and 18 above, and further in view of Ferguson (US Patent No. 5,520,926).

Applicants claim a method of treating skin - comprising applying to the skin a composition containing an effective amount of mannose-6-phosphate or mannose-1-phosphate.

The Denis et al patent is applied to the instant rejection of the claims as disclosed in the above rejection of the claims under 35 U.S.C. 103. The instant claims differ from the Denis et al patent by reciting in the instant claims that the phosphosugar thereof is mannose-6-phosphate or mannose-1-phosphate. The Ferguson patent shows that the treatment of skin with mannose-6-phosphate and mannose-1-phosphate is well known in the art (see abstract). Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the phosphosugar used in the Denis et al patent to regenerate skin with mannose-6-phosphate or mannose-1-phosphate, in view of the recognition in the art, as evidenced by the Ferguson patent, that mannose-6-phosphate or mannose-1-phosphate can effectively accelerate wound healing and mitigate scar formation of skin tissue.

Summary

5. All the claims are rejected.

Examiner's Telephone Number, Fax Number, and Other Information

6. For 24 hour access to patent application information 7 days per week, or for filing applications, please visit out website at **www.uspto.gov** and click on the button "Patent Electronic Business Center" for more information.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Everett White whose telephone number is (703) 308-4621. The examiner can normally be reached on Monday-Friday from 9:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James O. Wilson, can be reach on (703) 308-4624. The fax phone number for this Group is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.

E.White

James O. Wilson
Supervisory Primary Examiner
Technology Center 1600